



**Planning Department**

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***INTERDEPARTMENTAL COMMUNICATION***

**To:** Steven Ledoux, Town Manager **Date:** September 12, 2014  
**From:** Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner  
**Subject:** Special Permit Application #07/30/14-452

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Location: 457 Great Road, Acton, MA  
Applicant: 1 on 1 Self Indulgence, Inc., 457 Great Road, Acton, MA 01720  
Owner: 1 on 1 Self Indulgence, Inc., 457 Great Road, Acton, MA 01720  
Engineer: Stamski & McNary, Inc., 1000 Main Street, Acton, MA 01720  
Architect: Janovsky/Hurley Architects, Inc., 37 Walnut Street, Wellesley Hills, MA 02481  
Zoning: Limited Business (LB)  
Groundwater Protection District Zone 4  
Floor Area Ratio: Maximum FAR – 0.20, however, development of property located within Limited Business Zoning Districts is further regulated by Section 5.4.6.2  
Proposed Uses: Office & Services (Spa)  
Map/Parcel: C4-22  
Hearing Date: September 22, 2014  
Decision Due: December 21, 2014

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Attached are the legal ad, application, plan sheets and interdepartmental review comments received to date. As of this date, comments have been received from the Town of Acton's Engineering Department and Planning Department.

**The Site:**

The subject property was originally constructed in 1774 as a two-story, single family residence. The current property owner, 1 on 1 Self Indulgence, Inc. recently purchased the property with the intention of relocating their existing day spa business (currently located in Concord, MA) into the subject space. A second business, Schweppe Lighting Design, would also occupy a portion (just under 600 square feet) of the first floor.

The property is located at 457 Great Road, at the intersection of Harris Street and Great Road (Routes 2A & 119). The property is approximately 26,968 square feet in lot area and has approximately 310'-0" of lot frontage along Great Road and approximately 276'-0" of frontage along Harris Street.

The subject property is located within a Limited Business Zoning District, and although the base floor area ratio is .2, development of properties zoned Limited Business are further regulated by Section 5.4.6.2 of the

Zoning Bylaw. In general, Section 5.4 of the Zoning Bylaw deals with Transfer of Development Rights and defines “Sending” and “Receiving” districts. The calculation of development rights of properties located in “Sending” districts is in part set forth in Section 5.4.6.2 which states the following:

Maximum Number of Parking Spaces Permitted – In addition to the requirements of this Bylaw that a minimum number of parking spaces must be provided for various uses, in Sending Districts the parking spaces required to be provided may not exceed a maximum number. In the Sending District, the number of parking spaces that may be constructed on a LOT shall not exceed one parking space per 3,000 square feet of DEVELOPABLE SITE AREA

Properties located in Limited Business Zoning Districts have their development rights and potential calculated and arrived at in a slightly different manner than properties located in other zoning districts (Kelley’s Corner, Office Park, etc.) Although the Floor Area Ratio (FAR) remains applicable, in this particular instance, the FAR calculation is “backed into”, instead of calculating it initially. Based upon the requirements of Section 5.4.6.2, the subject property can support a maximum of 9 (nine) parking spaces total ( $26,968 \text{ ft}^2 \text{ lot area} / 3,000 = 9$ ). The total number of 9 (nine) parking spaces has currently been provided on the property.

Knowing the number of parking spaces a given property can support, it is then possible to calculate the maximum Net Floor Area for a given property. All uses within the Town of Acton have minimum parking requirements which are set forth in Section 6.3 of the Zoning Bylaw. The subject application proposed two (2) different uses on the property. The largest use will be that of a Spa, 1 on 1 Self Indulgence, which under Section 6.3 of the Zoning Bylaw is classified as a “service” (6.3.1.4), and has a parking requirement of one parking space for each 300 square feet of Net Floor Area. The Spa use as currently proposed, is approximately 2,000 square feet in Net Floor Area, which has a minimum parking requirement of 7 parking spaces. The other use proposed on the subject property is office space for Schweppe Lighting Design, which has a parking requirement of one parking space per 250 square feet of Net Floor Area. The application currently submitted indicates the office use as being just under 600 square feet in Net Floor Area, which has a minimum parking requirement of 3 parking spaces.

When the property is viewed as a whole and both of the minimum parking requirements are added together, the total minimum number of parking spaces required to be built on the site is ten (10). As discussed earlier, properties located in Limited Business Zoning Districts have a maximum number of parking spaces permitted on a given lot. Again, in this instance, the maximum number of parking spaces permitted is nine (9). Therefore, based on the proposed uses having a combined minimum requirement of ten (10) parking spaces, and knowing that a maximum of only nine (9) can be constructed, a deficit is created.

Section 6.2.3 of the Zoning Bylaw provides a path for which an applicant can seek relief from the minimum parking requirements set forth in Section 6.3 through a Special Permit from the Board of Selectmen. Section 6.2.3 states the following:

Relief from Parking Regulations by Special Permit from the Board of Selectmen – Relief from the parking regulations may be granted by special permit from the Board of Selectmen where the Board finds that it is not practicable to provide the number of parking spaces required, and either 1) in the case of a change from a nonconforming USE to a conforming USE, that the benefits of a change to a conforming USE outweigh the lack of parking spaces, or 2) in the case of a change from one conforming USE to another conforming USE, that the lack of parking spaces will not create undue congestion or traffic hazards on or off the site; provided that in either case the Board of Selectmen shall require the maximum practicable number of parking spaces. This Section shall not be construed to provide relief from the requirements of Section 5.4.6.2

Unfortunately, the last sentence of Section 6.2.3, in this particular instance, seems to preclude the subject property from being eligible to seek and/or receive a Special Permit from the Board of Selectmen for Relief from the Parking Regulations and Requirements of the Zoning Bylaw. If this is indeed true and found to be the case, then the only remaining possible avenue for the Applicant would be to seek a variance from the Zoning Board of Appeals. Variances are sought to provide relief from the dimensional requirements of the Zoning Bylaw and have mandatory findings required of the Board of Appeals before such a variance could be granted.

However, there may be an acceptable and reasonable approach and interpretation in order to address this situation. It is conceivable to think that the underlying basic intention of Section 5.4.6.2 was to be applied and utilized in the case of new development and construction projects. When applied in the instances of new development and construction projects, Section 5.4.6.2 can control the size, bulk and amount of building and structure which can be constructed on a given property. In the case of the application currently before the Board of Selectmen, there is no new construction proposed. The application essentially seeks to reutilize an existing building for new uses. The use of the property dating back to 1774 as a single family residential dwelling as well as the currently proposed use of the building for Spa and Office uses, are all permitted uses under the Zoning Bylaw.

Under the current circumstances, where there is an existing building, with no new square footage or floor area being proposed or built, and only interior modifications and renovations being proposed and undertaken, a reasonable conclusion can be made that where the new uses have a combined parking requirement of one (1) parking space more than the maximum nine (9) parking spaces that can be built on the property, the Board of Selectmen could issue and grant a Special Permit for Relief from the Parking Regulations.

Therefore, based upon the above noted information and the interpretation set out in the preceding paragraphs, the Planning and Zoning Department does not have any objection should the Board of Selectmen find sufficient grounds to grant the requested Special Permit.

The proposed relevant zoning information for the subject site is summarized in the following table:

<b>By-Law Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Min. Lot Area (ft <sup>2</sup> )	20,000 ft <sup>2</sup>	26,968 ft <sup>2</sup>	26,968 ft <sup>2</sup>
Min. Lot Frontage (ft)	200'-0"		
Great Road:		+/- 310.13'	+/- 310.13'
Harris Street:		+/- 276.05'	+/- 276.05'
Min. Front Yard (ft) – Great Road	30'-0"	Unknown (<30'-0") *	No Change *
Min. Front Yard (ft) – Harris Street	30'-0"	Unknown (<30'-0") *	No Change *
Min. Side/Rear Yard (ft)	30'-0"	Unknown (>30'-0") *	No Change *
Max. Building Height (ft)	36'-0"	Unknown *	No Change *
<b>Open Space</b>		<b>Required</b>	<b>Provided</b>
50% Minimum		50% (13,484 ft <sup>2</sup> )	63.6% (17,145 ft <sup>2</sup> )
<b>General Parking Requirements</b>			
Zoning Bylaw Section 5.4.6.2 – The maximum number of parking spaces that can be constructed on a Lot shall not exceed 1 parking space per 3,000 ft <sup>2</sup> of Developable Site Area			
Developable Site Area:	26,968 ft <sup>2</sup>		
Maximum # of Parking Spaces:	9		
<b>Parking Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Provided</b>
Use: Office Use (596 ft <sup>2</sup> N.F.A.) 1 space/250 ft <sup>2</sup> of N.F.A.	3		
Use: Services (1,981 ft <sup>2</sup> N.F.A.) 1 space/300 ft <sup>2</sup> of N.F.A.	7		
Total # of Parking Spaces Req'd:	10	9	9

- \* The existing structure/building is deemed to be pre-existing non-conforming to the current dimensional Zoning Bylaw requirements. When the building was originally constructed in approximately 1774, there was no Zoning Bylaw in existence. The building as it currently sits today, does not comply with the minimum dimensional requirements of the Bylaw.